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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES FIDELITY AND
12 GUARANTY COMPANY, a Maryland
corporation,

13 Plaintiff,

14 vs.

15 SAN DIEGO UNIFIED PORT DISTRICT, a
16 California public corporation; TRAYLOR
BROTHERS, INC., an Indiana corporation
17 doing business as TRAYLOR PACIFIC;
ANCHOR ENVIRONMENTAL, LLC., a
18 Washington limited liability company;
GREENWICH INSURANCE COMPANY, a
19 Delaware corporation,

20 Defendant.

CASE NO. 09-CV-0872-IEG (POR)

**ORDER GRANTING JOINT
MOTION TO DISMISS
DEFENDANT TRAYLOR BROS.,
INC.**

[Doc. No. 67]

21 Based upon the joint motion to dismiss submitted by Plaintiff UNITED STATES FIDELITY
22 AND GUARANTY COMPANY ("USF&G") and Defendant TRAYLOR BROS., INC., doing
23 business as TRAYLOR PACIFIC ("TRAYLOR PACIFIC"), and good cause appearing, the Court
24 HEREBY ORDERS:

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26 1. The joint motion to dismiss referenced above is GRANTED;

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28 2. TRAYLOR PACIFIC is hereby DISMISSED WITHOUT PREJUDICE from this

1 action, with TRAYLOR and USF&G each bearing their own attorneys' fees and costs through the date
2 of this Order;

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4 3. Notwithstanding TRAYLOR PACIFIC's dismissal, pursuant to TRAYLOR
5 PACIFIC'S stipulation in the Joint Motion (Doc. No. 67), TRAYLOR PACIFIC shall be bound by
6 any final judgment entered in this action, including but not limited to, whether USF&G has any duty
7 to defend and/or to indemnify with respect to the action entitled Traylor Bros., Inc. v. San Diego
8 Unified Port District, United States District Court for the Southern District of California, Case no.
9 08-CV-01019-L (JMA) (hereinafter "Underlying Action"), and whether TRAYLOR PACIFIC has any
10 rights or remedies to seek policy benefits against USF&G, including in any direct action against
11 USF&G pursuant to California Insurance Code section 11580(b)(2);


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13 4. TRAYLOR PACIFIC is decreed to have waived any right to allege or contend that its
14 dismissal was improper or that any final judgment entered in this action is not binding on TRAYLOR
15 PACIFIC on the grounds that TRAYLOR PACIFIC is, or ever was, a necessary, indispensable or
16 proper party whom USF&G was required or permitted to join, including under Rules 19 or 20 of the
17 Federal Rules of Civil Procedure. USF&G is decreed to have waived any right to allege or contend,
18 that TRAYLOR PACIFIC's dismissal was improper or that any final judgment entered in this action
19 is not binding on USF&G, including on the grounds that TRAYLOR PACIFIC is, or ever was, a
20 necessary, indispensable or proper party whom USF&G was required or permitted to join, including
21 under Rules 19 or 20 of the Federal Rules of Civil Procedure.

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23 5. Nothing in this Order is intended or shall be construed to be a decree, judgment, finding
24 or other determination as to: a) the fault, liability or occurrence of damages as to any party in either
25 this action or the Underlying Action; b) the availability of any coverage, defense or indemnity
26 obligations arising out of the Underlying Action as to any insured or party to this action or the
27 Underlying Action; or c) the availability of any right or remedy to enforce such coverage, defense or
28 indemnity obligations, including a direct action against USF&G under California Insurance Code

1 section 11580(b)(2).

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3 **IT IS SO ORDERED.**

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5 **DATED: November 13, 2009**

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7 **IRMA E. GONZALEZ, Chief Judge**
8 **United States District Court**